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10 Mandalay Bay, LLC, and MGM
RESORTS FESTIVAL GROUNDS LLC
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 OLGA RAMIREZ, et al.,

16 Plaintiffs,

17 vs.

18 MGM RESORTS INTERNATIONAL,
19 et al.,

20 Defendants.
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Case No.: LACV18-05564 JAK (FFMx)

JOINT RULE 16(b)/26(f) REPORT

Date: July 17, 2018

Time: 1:30 p.m.

Ctrm: 10B

Judge: Hon. John A. Kronstadt

1 Pursuant to the Court's July 5, 2018 Order, Plaintiffs and Defendants jointly
2 submit this Rule 16(b)/26(f) Report.

3 **A. Statement of the Case**

4 This action arises from the tragic mass shooting at the Route 91 Harvest
5 festival in Las Vegas, Nevada on October 1, 2017.

6 **Plaintiffs' Statement**

7 On July 3, 2018, plaintiffs asked defendants to stipulate to dismissal of this
8 action so that it could be properly filed in Nevada state court, but defendants
9 refused. As such, plaintiffs will be filing a motion to dismiss on July 13, 2018.

10 Olga Ramirez and Justin Bowles ("Plaintiffs") were attendees at the Route 91
11 Harvest festival when Stephen Paddock opened fire into a crowd of people,
12 resulting in the deaths of fifty-eight (58) people and injuries to thousands more,
13 including Plaintiffs. Ms. Ramirez sustained a gunshot wound to her back and, along
14 with Mr. Bowles, sustained severe emotional distress as a result of being involved in
15 the horrific event. As a result, Plaintiffs underwent medical care. Plaintiffs filed a
16 Complaint in Los Angeles Superior Court on January 25, 2018 alleging negligence
17 theories.

18 Since the time of filing, Plaintiffs have learned that there is an organized
19 group of plaintiffs' counsel working for the victims of the shooting and that they
20 intend to file all of the cases in Nevada state court. The first case removed on the
21 SAFETY Act is currently pending in the District of Nevada with a motion to remand
22 filed and pending. (*See* Pls.' Exhibit B Motion to Remand) Plaintiffs have further
23 learned that some additional information has come to light that is being addressed in
24 the Nevada case. (*See* Pls.' Exhibit C Motion for Extension). Investigation has
25 shown that the proper defendants are Nevada residents. Therefore, Plaintiffs plan to
26 move to dismiss this case without prejudice and re-file it in Nevada state court.
27 Alternatively, Plaintiffs respectfully request that either this case be stayed while the
28 motion to remand based on the SAFETY Act is decided in the District of Nevada or

1 that this case be transferred to the District of Nevada.

2 Defendants' Statement

3 Forty lawsuits, on behalf of 634 individuals, have been filed to date against
 4 Defendants, or a combination thereof, alleging personal injury, death, or emotional
 5 distress from Paddock's extraordinary crime. As plaintiffs continue to shop for a
 6 preferred forum, 36 of the lawsuits have been voluntarily dismissed with intention to
 7 re-file, leaving three actions currently in this Court and one action in Nevada federal
 8 court.¹ Defendants expect many more actions to be filed (or re-filed), as Defendants
 9 have received hold letters from counsel purporting to represent 2549 individuals.

10 The negligence claims asserted by these many Plaintiffs are meritless, as
 11 Defendants respectfully suggest will be clear once this Court, or any court, considers
 12 them. *First*, they are barred by federal law. After the tragic events of September 11,
 13 2001, Congress enacted the Support Anti-terrorism by Fostering Effective
 14 Technologies Act of 2002, 6 U.S.C. § 441 *et seq.* ("SAFETY Act"), which provides
 15 for exclusive federal jurisdiction over "all actions for any claim for ... personal
 16 injury, or death" arising from acts of mass violence where technologies or services
 17 certified by the U.S. Department of Homeland Security were used to prevent or
 18 respond to mass violence. *Id.* § 442(a)(1).

19 The SAFETY Act provides that "[t]here shall exist *only one cause of action*"
 20 for such injuries, and that it "may be brought *only against the Seller* [of the certified
 21 technologies or services] ... *and may not be brought against ... any other person or*
 22 *entity.*" 6 C.F.R. § 25.7(d) (emphasis added). Contemporary Services Corporation
 23 ("CSC") was the Security Vendor at the festival and used its DHS-certified services;
 24 it therefore is the only proper defendant on these claims. Plaintiffs in this action
 25 have recently dismissed CSC in a futile effort to avoid the statutory bar on their

26 _____
 27 ¹ Plaintiffs attach to this report 86 *pages* of plaintiff-side briefing and exhibits from the Nevada
 28 action, including a request for an extension to respond to a motion to dismiss and a motion to
 which the opposition has not yet been filed. Defendants object to Plaintiffs' misuse of this report
 and decline to burden the Court with further such exhibits, but can do so at the Court's request.

1 claims, but the law is clear that dismissal of the only possible defendant does not
2 create liability on the part of others.

3 *Second*, Plaintiffs' negligence claims against Defendants fail as a matter of
4 law. Paddock's shocking, meticulously planned assault was not reasonably
5 foreseeable as a matter of law and breaks any possible chain of legal causation.
6 Courts have rejected similar negligence claims against premises owners after other
7 mass shootings and acts of extraordinary criminal violence by third parties. Even
8 without the SAFETY Act, basic principles of tort law foreclose Plaintiffs' claims.

9 **B. Subject Matter Jurisdiction**

10 **Plaintiffs' Statement**

11 Plaintiff respectfully contends that the appropriate venue is in Nevada state
12 court. In response to Plaintiffs' state court complaint, Defendants noticed removal
13 based upon the "SAFETY Act," that was not intended to protect Defendants or
14 encompass allegations like those asserted by Plaintiffs. The first case removed on
15 the SAFETY Act is currently pending in the District of Nevada and there is motion
16 to remand filed and currently pending.

17 **Defendants' Statement**

18 This Court has original and exclusive subject-matter jurisdiction over this
19 action pursuant to 28 U.S.C. § 1331 and the SAFETY Act, 6 U.S.C. § 441 *et seq.*

20 **C. Legal Issues**

21 The key legal issues include the following:

- 22 a. Whether Defendants properly removed the case;
- 23 b. Whether Plaintiffs' claims are barred by the SAFETY Act;
- 24 c. Whether, if Plaintiffs' claims were not barred by the SAFETY Act,
25 Plaintiffs could prove the elements of their negligence claim, namely,
26 that Defendants breached a duty of care; that such a breach was the
27 legal cause of the injuries Plaintiffs suffered; and that Plaintiffs
28 suffered cognizable damages.

1 **D. Parties, and Non-Party Witnesses**

2 The parties are Plaintiffs Olga Ramirez and Justin Bowles; and Defendants
3 MGM Resorts International, Mandalay Bay, LLC (f/k/a Mandalay Corp.), and
4 MGM Resorts Festival Grounds, LLC. MGM Resorts International is the publicly
5 traded parent company of the latter two defendants. Plaintiffs have just dismissed
6 the other defendants: Live Nation Entertainment, Inc., Live Nation Group d/b/a
7 OneNationGroup, LLC, and Contemporary Services Corporation.

8 Plaintiffs intend to call as witnesses, Plaintiffs, other parties, other percipient
9 witnesses whose identities will be determined through discovery, Defendants'
10 designated corporate representatives and other fact witnesses whose identities will
11 be determined through fact discovery, and expert witnesses who have not been
12 identified at this time.

13 Defendants intend to call as witnesses Plaintiffs, other fact witnesses whose
14 identities will be determined through fact discovery, and expert witnesses who have
15 not been identified at this time.

16 **E. Damages**

17 Plaintiffs' Statement

18 Plaintiffs seek monetary damages based on the contention that negligence of
19 the Defendants was the legal cause of their injuries and damages. Plaintiffs also seek
20 punitive damages subject to proof. Plaintiffs' calculation of damages will be
21 determined during the course of discovery and may be subject to expert analysis.

22 Defendants' Statement

23 The SAFETY Act limits any damages recovery for personal-injury or death
24 claims arising from the mass shooting in several respects, including limiting the
25 total recovery to the amount of CSC's federally-mandated insurance coverage. 6
26 U.S.C. § 443. Even setting aside the statutory limits on damages, any calculation of
27 the realistic range of Plaintiffs' claimed damages is premature because evidence
28

1 relevant to such calculation will be produced in the course of fact discovery and may
2 be subject to expert analysis.

3 **F. Insurance**

4 In the event that Defendants incur any liability, Defendants have insurance
5 coverage as to which the insurance carriers have not expressed any reservation of
6 rights or coverage defenses that indicate they dispute coverage.

7 **G. Motions**

8 **Plaintiffs' Statement**

9 Plaintiff intends on filing a Motion for an Order of Dismissal Without
10 Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(2). Parties have met and
11 conferred as to the issue of Plaintiff's Motion for an Order of Dismissal Without
12 Prejudice and requested a stipulation to a Dismissal without prejudice, so that
13 Plaintiff could file in Nevada state court. Defendant denied the request for
14 stipulation and the motion will be filed on Friday, July 13, 2018, the earliest date
15 permitted by Federal Rules.

16 **Defendants' Statement**

17 On June 29, 2018, Defendants filed a motion to dismiss the Complaint.² The
18 Court has set this motion for a hearing on October 1, 2018. In addition, Defendants
19 anticipate filing, at the earliest appropriate time, a motion for summary judgment
20 based on the protections of the SAFETY Act.

21 Defendants oppose any effort by Plaintiffs to continue in the forum-shopping
22 that has characterized this litigation—with 36 voluntarily dismissed lawsuits—plus
23 dismissal of defendants in attempts to avoid federal jurisdiction and the application
24 of the SAFETY Act, a critical issue of first impression under federal law.

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27 ² Because Defendants have filed an Answer, the motion is properly considered
28 under the identical standard of Federal Rule of Civil Procedure 12(c). *See, e.g.,*
Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980).

1 **H. Manual for Complex Litigation**

2 **Plaintiffs' Statement**

3 JPML transfer is not appropriate because there is no pending multi-district
4 litigation. Nor would there be any reason for an MDL in this case. Plaintiffs will be
5 dismissing their case and refile in Nevada state court against the Nevada
6 defendants.

7 **Defendants' Statement**

8 Defendants presently intend to move to consolidate this action and the other
9 actions pursuant to 28 U.S.C. § 1407 (multidistrict litigation). Defendants believe
10 that this Court would be an appropriate transferee court, although we understand
11 that decision will be in the discretion of the Judicial Panel on Multidistrict
12 Litigation. If the actions are not consolidated before one district court, or if they are
13 consolidated before this Court, Defendants believe that it will be appropriate to
14 consider and adopt certain procedures from the Manual for Complex Litigation,
15 such as those relating to aggregating actions across districts, appointing lead counsel
16 for plaintiffs, streamlining motion practice on common issues, phasing discovery
17 (including by limiting initial discovery to matters relating to the SAFETY Act),
18 preventing duplicative discovery, and potentially bifurcating any trial. Defendants
19 believe that it would benefit the parties and the Court to brief these complex matters
20 of case management separately, and before any discovery begins.

21 **I. Status of Discovery**

22 The parties have not undertaken discovery.

23 **J. Discovery Plan**

24 **Plaintiffs' Statement**

25 Plaintiff contends that discovery should proceed once this Court has ruled on
26 Plaintiff's motion to dismiss and the jurisdictional issue over this matter and
27 believes that Nevada state court is the appropriate venue.
28

1 Plaintiff intends to perform written discovery and depositions in accordance
2 with Federal Rules of Civil Procedure. Plaintiff disputes that any discovery should
3 be limited to issues pertaining to the application of the SAFETY Act. Plaintiff is
4 entitled to perform all necessary discovery in the preparation of opposing any
5 dispositive motions and Trial.

6 Defendants' Statement

7 Defendants believe that the initial phase of discovery should be limited solely
8 to issues pertaining to the application of the SAFETY Act. Defendants expect that
9 this initial discovery would confirm the role of CSC—the Security Vendor, recently
10 dismissed by Plaintiffs—in managing security operations at the festival, including
11 its deployment of services certified by the Department of Homeland Security to
12 prevent and respond to acts of mass violence.

13 Under the SAFETY Act, CSC's deployment of such certified services creates
14 exclusive federal jurisdiction and, as a matter of federal law, bars personal-injury
15 and death claims against any entity other than CSC. Applying the SAFETY Act to
16 this action would be a dispositive, threshold matter. This is the first time in history
17 that an act of mass violence occurred where services certified by the Department of
18 Homeland Security were deployed, and the application of the Act therefore
19 represents a matter of first impression.

20 Defendants respectfully submit that discovery should be structured such that
21 discovery bearing on the SAFETY Act is advanced and expedited in order to allow
22 for an early motion for summary judgment under the SAFETY Act.

23 Prioritizing SAFETY Act discovery will cause no prejudice or delay because
24 discovery concerning security at the festival site will be part of any broader merits
25 discovery in any event. And, prioritizing SAFETY Act discovery will promote
26 efficiency for the additional reason that such discovery is relevant to all actions
27 against Defendants—including the action in Nevada federal court—and will be
28 relevant to all future actions that are filed. This approach therefore will allow the

1 Court to defer consideration of how best to coordinate discovery across multiple
 2 actions in different jurisdictions. Moreover, discovery into these limited issues also
 3 may conserve resources because broader discovery will be unnecessary if the Court
 4 grants Defendants' pending motion for judgment on the pleadings.³

5 **K. Discovery Cut-Off**

6 Plaintiffs' Statement

7 Plaintiffs contend that Nevada state court is the appropriate venue and that
 8 discovery will not need to proceed in the federal court.

9 Defendants' Statement

10 As set forth above, Defendants believe that initial discovery should be limited
 11 solely to issues relating to application of the SAFETY Act. Defendants propose that
 12 such SAFETY Act discovery be completed by December 31, 2018. Defendants
 13 believe that any broader merits discovery will be unnecessary because Plaintiffs'
 14 claims are barred by federal law, which creates significant uncertainty regarding the
 15 current state of the litigation. That actions are pending in multiple jurisdictions, and
 16 that many more actions may be filed, adds to this uncertainty. With these caveats,
 17 however, and because the Court has requested a proposal, Defendants propose that,
 18 if discovery were to proceed beyond the SAFETY Act issues, all fact discovery
 19 should be completed by October 28, 2019.

20 **L. Expert Discovery**

21 Plaintiffs' Statement

22 Plaintiffs contend that Nevada state court is the appropriate venue and that
 23 discovery will not need to proceed in the federal court.

24 Defendants' Statement

25 Assuming that this action proceeds to expert discovery, with the same caveats
 26 as above, Defendants propose January 6, 2020 as the date for initial expert witness

27
 28 ³ For these reasons, Defendants state pursuant to Federal Rule of Civil Procedure
 26(a)(1)(C) that initial disclosures are not appropriate at this time.

1 disclosures, February 17, 2020 as the date for rebuttal expert witness disclosures,
2 and March 30, 2020 as the expert discovery cut-off.

3 **M. Dispositive Motions**

4 **Plaintiffs' Statement**

5 Plaintiffs contend that Nevada state court is the appropriate venue. Plaintiffs
6 nevertheless intend to oppose Defendants' dispositive motions when filed.

7 **Defendants' Statement**

8 Defendants have filed a motion for judgment on the pleadings⁴ on the grounds
9 that the Complaint fails to state a negligence claim as a matter of California law. In
10 addition, Defendants anticipate filing a motion for summary judgment on the ground
11 that Plaintiffs' claims are barred by the SAFETY Act. If these motions are denied,
12 Defendants anticipate filing additional summary-judgment and in limine motions,
13 but it is premature now to describe the scope and subject matter of such motions.

14 **N. Settlement**

15 The parties have not had settlement discussions. As required by Local Rule
16 16-15.4, the parties choose ADR Procedure No. 3 (private dispute resolution).

17 **Plaintiffs' Statement**

18 Plaintiffs are not opposed to productive settlement discussions.

19 **Defendants' Statement**

20 Defendants believe that settlement discussions will not be productive because
21 Plaintiffs' claims are barred by the SAFETY Act. Congress created a federal cause
22 of action against only one possible defendant (here, CSC) and precluded all claims
23 against any other person or entity. Rather than recognize what the statute provides,
24 Plaintiffs filed this action in state court and have recently dismissed CSC in an
25 attempt to avoid the inevitable outcome. The SAFETY Act and associated
26 regulations make clear that asserting claims against defendants *other than* CSC does

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28 ⁴ As noted above, because Defendants have filed an Answer, the motion to dismiss properly is considered a motion for judgment on the pleadings.

1 not evade application of the statute, and that preventing such claims was the purpose
2 of the SAFETY Act. Even setting aside the importance of rulings on Defendants'
3 early, dispositive motions, any discussion of settlement necessarily is premature in
4 light of the numerous potential plaintiffs not before the Court (because they filed
5 and dismissed with the intent to re-file, or sent hold letters indicating only an intent
6 to file). Defendants do not believe that piecemeal mediation of claims subject to
7 dismissal on multiple grounds will be productive.

8 **O. Trial Estimate**

9 As stated above, Plaintiff believes that the appropriate venue is Nevada state
10 court. Plaintiff's estimate a three (3) to four (4) week jury trial.

11 As stated above, Defendants believe the case should be dismissed in response
12 to their dispositive motions. If those motions were to be denied, Defendants
13 estimate that any trial of these actions will require at least 32 court days.
14 Defendants cannot yet identify the witnesses they intend to call at trial, but expect
15 the number of witnesses called by the defense would be at least 30-40.

16 **P. Trial Counsel**

17 Plaintiffs will be represented at trial by Walter J. Lack and Christopher A.
18 Kanne. Lead trial counsel will be Walter J. Lack.

19 Defendants will be represented at trial by Brad D. Brian, Michael R. Doyen,
20 Daniel B. Levin, Bethany W. Kristovich, and John M. Gildersleeve of Munger,
21 Tolles & Olson LLP. Lead trial counsel will be Brad D. Brian.

22 **Q. Independent Expert or Master**

23 The parties agree that the Court need not consider appointing a Master
24 pursuant to Rule 53 or an independent scientific expert at this time.

25 **R. Timetable**

26 Attached as **Exhibit A** is the completed Schedule of Pretrial and Trial Dates
27 for Civil Cases.

1 As set forth above, Defendants believe that discovery regarding the SAFETY
2 Act should be advanced and expedited, that discovery should be coordinated with
3 discovery in all related actions, and that discovery into broader merits issues will
4 prove unnecessary. Nonetheless, with these caveats, Defendants have proposed
5 pretrial and trial dates above as directed by the Court.

6 **S. Other Issues**

7 **Plaintiffs' Statement**

8 Plaintiffs do not offer any other issues at this time, except for the issues
9 already contained in this Joint Report.

10 **Defendants' Statement**

11 Defendants have described above the most pressing issue affecting the status
12 or management of this action—namely, the need to coordinate motion practice and
13 discovery on a critical issue of first impression, the application of the SAFETY Act
14 under federal law. Defendants also note that this litigation poses complex questions
15 of case management across multiple jurisdictions, such as ensuring that Defendants
16 are not subjected to duplicative discovery. Defendants presently intend to seek
17 consolidation by the Judicial Panel on Multidistrict Litigation.

18 Defendants appreciate the opportunity to discuss these and other issues with
19 Plaintiffs and the Court in greater detail at the status conference.

20 **T. Patent Cases**

21 Not applicable.

22 **U. Whether the Parties Wish to Have a Magistrate Judge Preside**

23 The parties do not wish to have a Magistrate Judge preside.
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1 DATED: July 10, 2018

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25 Attorneys for Defendants

26 Pursuant to Local Rule 5-4.3.4, I, Brad D. Brian attest that the above signatory has
27 authorized this filing and concurs in its content.
28